

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-179

In the Matter of

Amendment of Section 73.202(b), RM-8728
Table of Allotments,
FM Broadcast Stations.
(Cassville and Kimberling City,
Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: December 6, 1995; Released: December 15, 1995

Comment Date: February 5, 1996

Reply Comment Date: February 20, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Kevin M. and Patricia W. Wodlinger ("petitioner"), licensee of Station KRLK, Channel 261A, Cassville, Missouri. Petitioner requests the substitution of Channel 261C2 for Channel 261A at Cassville, Missouri, and reallocation of Channel 261C2 to Kimberling City, Missouri, and modification of Station KRLK's license to specify Kimberling City as its community of license. Petitioner states that it will apply for the channel at Kimberling City if allotted to the community.

2. Petitioner contends that its request complies with Sections 1.420(g) and (i) of the Commission's rules, which permits the modification of a station's license to specify a higher class channel and/or a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Petitioner states that the allotment of Channel 261C2 would provide Kimberling City, a community of 1,590 people with its first local aural transmission service, whereas Cassville, a community of 2,371 people, would retain Station KRMO(AM).¹

3. We believe the public interest could be served by the substitution of Channel 261C2 for Channel 261A at Cassville and reallocation of Channel 261C2 from Cassville to Kimberling City, since it will provide Kimberling City

with its first local FM transmission service and enable Station KRLK to expand its service area. However, since petitioner indicated it intends to relocate its transmitter, there will be areas which will lose existing reception service as well as areas which will gain new reception service. We request that the petitioner provides information showing the areas and populations which will receive new service and the areas and populations which will lose existing service if Channel 261 is reallocated to Kimberling City.² In addition, the study should also indicate the number of reception services which are now available within the gain and loss areas.

4. Channel 261C2 can be allotted to Kimberling City at petitioner's specified site in compliance with the Commission's minimum distance separation requirements 17.5 kilometers (10.9 miles) south of the Community.³ At that site, Channel 261C2 will be fully spaced to Station KGMF-FM, Channel 263C2, Aurora, Missouri, and to Station KBFL, Channel 260C3, Buffalo, Missouri. Station KBFL currently operates on Channel 260A but was authorized to go to Channel 260C3 in MM Docket No. 94-151. See 10 FCC 6526 Rcd (1995). Although the proposal for Channel 261C2 at Kimberling City complies with the Commission's spacing requirements, we note that both the community of Kimberling City and the proposed transmitter site are located inside the Mark Twain National Forest. Therefore, petitioner is requested to provide information showing that an actual transmitter site is available that provides city grade coverage to Kimberling City.⁴

5. In view of the fact that the proposed allotment would provide a first local aural transmission service to Kimberling City, Missouri, the Commission believes the public interest would be served by soliciting comments on petitioner's proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules for the communities listed below:

City	Channel No.	
	Present	Proposed
Cassville, Missouri	261A	----
Kimberling City, Missouri	----	261C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **February 5, 1996**, and reply comments on or before **February 20, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the

¹ A license for Station KRMO(AM) at Cassville, Missouri, was granted on November 29, 1995 (BI-950906AC).

² "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another regardless of whether the service removed constitutes transmission service, a reception service, or both." *Modification of FM and TV Au-*

thorizations to Specify a New Community of License (Memorandum Opinion and Order), 5 FCC Rcd 7094, 7097 (1990).

³ The coordinates for Channel 261C2 at Kimberling City are 36-30-00 and 93-23-00.

⁴ A Commission engineering analysis indicates that Station KRLK cannot provide city grade coverage to Kimberling City from its existing site (36-37-39 and 93-48-21).

Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

William J. Pennington, III
Post Office Box 1447
Mount Pleasant, South Carolina 29465

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial

comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.